



DEPARTMENT OF EDUCATION

[Docket ID ED-2021-OESE-0148]

34 CFR Chapter II

Proposed definition--Supporting Effective Educator
Development Program

AGENCY: Office of Elementary and Secondary Education,
Department of Education.

ACTION: Proposed definition.

SUMMARY: The Department of Education (Department) proposes to establish a definition for the Supporting Effective Educator Development (SEED) program, Assistance Listing Number 84.423A. We propose to define "national nonprofit entity," for the purpose of clarifying the SEED program eligibility requirements.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- Federal eRulemaking Portal: Go to

www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "Help."

- Postal Mail, Commercial Delivery, or Hand Delivery:

If you mail or deliver your comments about the proposed definition, address them to Christine Miller, U.S. Department of Education, 400 Maryland Avenue, SW, room 3C152 Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Christine Miller, U.S. Department of Education, 400 Maryland Avenue, SW, room 3C152, Washington, DC 20202. Telephone: (202)260-7350. Email: christine.miller@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed definition. To ensure that your

comments have maximum effect in developing the final definition, we urge you to identify clearly the specific section of the proposed definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed definition. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of our programs.

During and after the comment period, you may inspect all public comments about the proposed definition by accessing Regulations.gov. You may also inspect the comments in person. Please contact the person listed under FOR FURTHER INFORMATION CONTACT to make arrangements to inspect the comments in person.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed definition. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Program Authority: Section 2242 of the ESEA (20 U.S.C. 6672) .

Proposed Definition:

Background: Section 2242 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), provides that eligible entities for awards under the SEED program include national nonprofit entities with a demonstrated record of raising student academic achievement, graduation rates, and rates of higher education attendance, matriculation, or completion, or of effectiveness in providing preparation and professional development activities and programs for teachers, principals, or other school leaders. We propose to define "national nonprofit entity," for purposes of this eligibility requirement, to allow potential applicants to determine their eligibility for a grant under this program more readily, have a clear understanding of the information they must provide to establish eligibility, and allow the Department to make decisions on applicant eligibility more effectively and efficiently. Our experience with administering the fiscal year (FY) 2018 and FY 2020 SEED competitions, including feedback from applicants and funded grantees, demonstrates the need to define the term "national nonprofit entity" and provide more transparency regarding applicant eligibility requirements. The proposed definition incorporates the definition of "nonprofit" under 34 CFR 77.1(c) but also clarifies how an entity would

demonstrate that its work is "national" in scope. The proposed definition specifies that the nonprofit organization must provide services in three or more States. We believe that, if an entity is providing services in three or more States, its work is of sufficient breadth to be considered "national" in scope.

Proposed Definition: The Department proposes the following definition for use in any SEED competition in which the term "national nonprofit entity" is used in connection with the eligibility requirement in section 2242 of the ESEA:

National nonprofit entity means an entity--

(a) That meets the definition of "nonprofit" under 34 CFR 77.1(c); and

(b) Is of national scope, which requires that the entity--

(1) Provides services in three or more States; and

(2) Demonstrates a proven record of serving or benefitting teachers, principals, and school leaders across these States.

Final Definition: We will announce the final definition in a document in the *Federal Register*. We will determine the final definition after considering responses to the proposed definition and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable

rulemaking requirements.

Note: This document does not solicit applications.

In any year in which we choose to use the proposed definition, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance

objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing the proposed definition only on a reasoned determination that the benefits would justify the costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that the proposed definition is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

Potential Costs and Benefits

The Department believes that this proposed regulatory action would not impose significant costs on eligible entities, whose participation in our programs is voluntary, and costs can generally be covered with grant funds. As a result, the proposed definition would not impose any burden except when an entity voluntarily elects to apply for a grant. The benefits of the proposed definition would outweigh any associated costs because they would help clarify applicant eligibility.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed definition easier to understand, including answers to questions such as the following:

- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?
- Are the requirements in the proposed regulations

clearly stated?

- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?

To send any comments that concern how the Department could make the proposed definition easier to understand, see the instructions in the ADDRESSES section.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary and related mostly to an increase in the number of applications prepared and

submitted annually for competitive grant competitions. Therefore, we do not believe that the proposed definition would significantly impact small entities beyond the potential for increasing the likelihood of their applying for, and receiving, competitive grants from the Department.

Paperwork Reduction Act of 1995

The proposed definition does not contain any information collection requirements.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version

of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Ian Rosenblum,
*Deputy Assistant Secretary
for Policy and Programs
Delegated the Authority to
Perform the Functions and
Duties of the Assistant
Secretary for the Office of
Elementary and Secondary
Education.*